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## BALTIMORE, C. &amp; A. RY. CO. v. HUDGINS.

March 12, 1914.

[81 S. E. 48.]

**1. Trial (§ 46\*)—Offer of Proof.**—In a shipper's suit for the loss of fish condemned by health officers after the consignees' refusal to accept the shipment, a message from another shipper was inadmissible to show a conspiracy to refuse acceptance; there being no proof or avowal by defendant's counsel to show plaintiff's connection with the conspiracy or the sending of the message.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 115-117; Dec. Dig. § 46.\* 5 Va.-W. Va. Enc. Dig. 299; 14 Va.-W. Va. Enc. Dig. 412; 15 Va.-W. Va. Enc. Dig. 352.]

**2. Evidence (§ 242\*)—Admissions.**—A statement by a servant, not shown to have been made in the performance of his duty, is not evidence against the employer.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 893-907; Dec. Dig. § 242.\* 4 Va.-W. Va. Enc. Dig. 339; 14 Va.-W. Va. Enc. Dig. 310; 15 Va.-W. Va. Enc. Dig. 257.]

**3. Witnesses (§ 383\*)—Impeachment.**—It is competent to ask a witness whether he has made a statement inconsistent with his testimony, in order to lay a foundation for contradicting him, though the statement is collateral or immaterial to the issue.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. § 383.\* 13 Va.-W. Va. Enc. Dig. 568; 14 Va.-W. Va. Enc. Dig. 1100; 15 Va.-W. Va. Enc. Dig. 1098.]

**4. Shipping (§ 138\*)—Carriage of Goods—Statutory Exemption from Liability—Cause of Loss.**—The exemption from liability for damage to goods resulting from the stranding of a vessel given by section 3 of the Harter Act (Act Feb. 13, 1893, c. 105, 27 Stat. 445 [U. S. Comp. St. 1901, p. 2946]) does not extend to damage resulting from failure to use reasonable care in preserving and forwarding them after the stranding.

[Ed. Note.—For other cases, see Shipping, Cent. Dig. § 492; Dec. Dig. § 138.\* 12 Va.-W. Va. Enc. Dig. 390; 14 Va.-W. Va. Enc. Dig. 929.]

**5. Carriers (§ 135\*)—Carriage of Goods—Injuries to Goods—Damages.**—The measure of damages for delivery of goods damaged in transportation, but not so damaged as to render them unfit for market, is the difference between their value at the time of a reasonable delivery and the price for which they are sold in the market after deducting the expense of sale.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 557-559,

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

599-602, 603; Dec. Dig. § 135.\* 4 Va.-W. Va. Enc. Dig. 194; 14 Va.-W. Va. Enc. Dig. 200; 15 Va.-W. Va. Enc. Dig. 169.]

**6. Carriers (§ 135\*)—Carriage of Goods—Delivery by Carrier.**—If the carrier can sell perishable goods which the consignees refuse to receive, it should do so.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 557-559, 599-602, 603; Dec. Dig. § 135.\* 2 Va.-W. Va. Enc. Dig. 677; 14 Va.-W. Va. Enc. Dig. 188.]

**7. Carriers (§ 135\*)—Carriage of Goods—Injury to Goods.**—Where goods damaged in transportation become a total loss by failure of the consignees to receive them, the carrier is liable for the difference between the value of the goods, if delivered in a reasonable time, and their value on arrival at the place of destination, and is not relieved of all liability because the consignees failed in the performance of their duty.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 557-559, 599-602, 603; Dec. Dig. § 135.\* 4 Va.-W. Va. Enc. Dig. 194; 14 Va.-W. Va. Enc. Dig. 200; 15 Va.-W. Va. Enc. Dig. 169.]

Error to Circuit Court, Mathews County.

Action by R. L. Hudgins against the Baltimore, Chesapeake & Atlantic Railway Company. From a judgment for plaintiff, defendant brings error. Reversed.

*J. Boyd Scars*, of Mathews, and *J. W. Chinn, Jr.*, of Warsaw, for plaintiff in error.

*J. N. Stubbs*, of Woods Cross Roads, *J. R. Saunders*, and *Henley, Garnett & Hall*, of Richmond, for defendant in error.

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WHEELER et al. v. THOMAS et al.

THOMAS et al. v. WHEELER.

March 12, 1914.

[81 S. E. 51.]

**1. Appeal and Error (§ 747\*)—Cross-Appeals—Propriety.**—The bringing of separate appeals by the parties to a suit, each bringing up a part only of the record is not a proper practice, as the statute gives ample provision for bringing up so much of the record as is necessary to fairly present the whole case, and the appellee's right to assign cross-errors is safeguarded by rule 8 of the Supreme Court of Appeals (71 S. E. viii), which provides that, if error is perceived against any appellee, the court will consider the whole record as before them, and reverse the proceedings in whole or in part in the

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.